

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:

Hussein Kassem,

Case No. 03-75790-R

Debtor.

Chapter 7

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Order Denying Debtor's Motion for Reinstatement of Discharge

The debtor has filed a motion for reinstatement of discharge and the trustee has filed an objection. On April 29, 2004, the debtor's discharge was granted. On September 15, 2004, the Court entered an order that revoked the debtor's discharge under 11 U.S.C. § 727(d)(1), imposed costs against the debtor and his counsel in the amount of \$1,000, and set a hearing for October 27, 2004, to determine whether the debtor had complied with his obligations under the bankruptcy code. This order was entered in response to a motion filed by the trustee establishing that the debtor had failed to cooperate with the trustee in providing documents and other information regarding the debtor's assets and in making necessary amendments to the schedules. The debtor had also failed to turn over to the trustee certain funds that were property of the estate.

The debtor failed to appear at the hearing on October 27, 2004, despite the provision in the order that placed the burden of proof on the debtor to establish his entitlement to a discharge. Accordingly, the Court held that the debtor failed to meet his burden and failed to establish good cause for withholding disclosure of assets from the trustee. The Court ordered the debtor to turn over to the trustee all funds that the trustee requested and set a hearing on the trustee's objection to the debtor's claim of exemption in those

funds for December 13, 2004.

At the hearing on December 13, 2004, the trustee's counsel advised the Court that the debtor had turned over to the trustee \$5,000, which resolved the trustee's exemption objection. Because the debtor was not present (again), the Court did not address the reinstatement of the debtor's discharge.

In the present motion, filed over 13 months later on January 17, 2006, the debtor contends that he has fully complied with the Court's orders and the bankruptcy code and he thus requests reinstatement of his discharge. The trustee contends that the motion cites no authority; that the motion, filed 15 months after the discharge was revoked, was not filed within a reasonable time as required by FED. R. CIV. P. 60(b); that the creditors were prejudiced by the debtor's dilatory and obstructive conduct by causing the administrative expenses of the trustee's attorney to consume most of assets of the estate; and that the debtor cannot legally blame the delays on his prior counsel.

The debtor had a clear obligation to disclose assets under 11 U.S.C. § 521(1); to cooperate with the trustee under 11 U.S.C. § 521(3); and to turn over to the trustee all property of the estate under 11 U.S.C. § 542(a). *Payne v. Wood*, 775 F.2d 202, 206 (7th Cir. 1985); *Chalik v. Moorefield (In re Chalik)*, 748 F.2d 616, 618 (11th Cir. 1984); *Cohen v. McElroy (In re McElroy)*, 229 B.R. 483, 488 (Bankr. M.D. Fla. 1998); *Van Roy v. Watkins (In re Watkins)*, 84 B.R. 246, 250 (Bankr. S.D. Fla. 1988); *In re Famisaran*, 224 B.R. 886, 891 (Bankr. N.D. Ill. 1998); *Cole Taylor Bank v. Yonkers (In re Yonkers)*, 219 B.R. 227, 230 (Bankr. N.D. Ill. 1997); *National Am. Ins. Co. v. Guajardo (In re Guajardo)*, 215 B.R. 739, 741 (Bankr. W.D. Ark. 1997); *United States v. Trembath (In re Trembath)*, 205 B.R. 909, 914 (Bankr. N.D. Ill. 1997); *Netherton v. Baker (In re Baker)*, 205 B.R. 125, 130 (Bankr. N.D. Ill. 1997), *motion to amend judgment denied*, 206 B.R. 510 (Bankr. N.D. Ill. 1997); *In re Robinson*, 198 B.R. 1017, 1022 n.6 (Bankr. N.D. Ga. 1996); *Torgenrud v. Benson (In re Wolcott)*,

194 B.R. 477, 486 (Bankr. D. Mont. 1996); *Hollar v. United States (In re Hollar)*, 184 B.R. 25, 29 (Bankr. M.D.N.C. 1995), *aff'd*, 188 B.R. 539 (M.D.N.C. 1995), *aff'd*, 92 F.3d 1179 (4th Cir. 1996) (unpublished table decision available at 1996 WL 442883); *Cundiff v. Wiethuchter (In re Wiethuchter)*, 147 B.R. 193, 199 (Bankr. E.D. Mo. 1992); *Jones v. United States (In re Jones)*, 134 B.R. 274, 279 (N.D. Ill. 1991); *Banc One, Texas, N.A. v. Braymer (In re Braymer)*, 126 B.R. 499, 502 (Bankr. N.D. Tex. 1991).

The record in this case establishes a substantial, unnecessary and unjustified delay by the debtor in complying with his fundamental obligations of fully disclosing assets, cooperating with the trustee, and turning over estate property. This conduct was also prejudicial to the creditors because it forced the trustee's counsel to expend the substantial bulk of estate assets in enforcing the debtor's statutory obligations. Moreover, the debtor did not take advantage of the opportunities that the Court gave the debtor to establish that he was entitled to his discharge. The Court, the trustee, the trustee's attorney and the creditors have all devoted far too much in resources in addressing and rectifying the problems created by this debtor. There is no substantial or credible evidence that these efforts were caused by the debtor's prior attorney. To grant this debtor a discharge would be to condone his conduct in this case. The Court concludes that the debtor has not established any equitable basis for the relief that he now seeks. Accordingly, the motion is denied.

Not for Publication

Entered: March 23, 2006

/s/ Steven Rhodes
Steven Rhodes
Chief Bankruptcy Judge